THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NOs : 1854 of 2004 and 3808 of 2004

Dated 16-08-2005

Between:

1 S.Y. Venkatarami Reddy and , Sagili Chinna Venkat Reddy,
Revenue Office, Kadapa.
2 P. Venkata Subbaiah, S/o Subbanna,
Kadapa , APSPDCL, Kadapa.

..... PETITIONERS

AND

The Superintendent Engineer (O),

Southern Power Distribution Company of A.P. Limited

and another.

.....RESPONDENTS

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COMMON ORDER:

Since the parties and the subject matter in both these writ petitions are one and the same, they are being disposed of by this common order.

W.P.No.3808 of 2004 has been filed questioning the Memo No.SE/O/KDP/ADM/SI/F66/D.No.458/2004, dated 26-02-2004, as illegal and arbitrary and to direct the respondents to continue their seniority and notional benefits given to them as per the proceedings of the first respondent dated 21-03-2001.

W.P.No.1854 of 2004 has been filed questioning the Memo No.SE/O/KDP/Admn./S1/66/D.No.94-2003, dated 08-01-1993, as illegal and arbitrary and contrary to BPMS.No.248, dated 11-08-1993 and to direct the respondents to declare the probation of the petitioners w.e.f. 29-12-1993 and 03-05-1995 respectively and also to fix notional pay in the cadre of UDA by counting the entire service for further promotion to the post of Junior Accounts Officer.

The brief facts that are necessary for disposal of these writ petitions are as follows:

The 1st petitioner was appointed as Bill Collector in the then APSEB on 19-03-2004 while the 2nd petitioner was appointed as Bill Collector on 14-08-1974. Both of them passed graduation during the years 1972 and 1977 respectively. As per the Service Regulations of the Board, the academic qualification of graduation is necessary for appointment to the post of LDC w.e.f. 11-07-1974. Prior to the said date, there was no requirement of graduation qualification either for direct recruitment or for appointment by transfer. The petitioners made a representation to the Board in the year 1991. The Board issued an order in their favour on 05-06-1991 appointing them as LDCs w.e.f. 11-07-1974 and 30-04-1977 respectively. When the said order was cancelled, petitioners and others filed W.P.No.15533 of 1991 and the same was allowed on 25-07-1994. Thereafter, the respondents issued an order on 09-05-1995 confirming the earlier order of cancellation. Aggrieved by the said order, the petitioners filed W.P.No.10269 of 1995 and the same was disposed of directing the petitioners to file appeal before the Board. Accordingly, the petitioners represented before the Board and the Board passed an order dated 09-11-1999 allowing the appeal and confirming the order of the 1st respondent dated 05-06-1991. As there was no consequential action by the 1st respondent, the petitioners filed W.P.No.13982 of 2000 and the same was disposed of directing the respondents to finalise the seniority list. In pursuance of the said order, the 1st respondent issued Memo dated 21-03-2001, wherein the notional date of appointment by transfer in the cadre of LDC was assigned to the petitioners.

While the matter stood thus, the first respondent issued impugned Memo dated 26-02-2004.

The petitioners made a representation on 28-10-2002 seeking benefits in the cadre of UDC, but the first respondent issued Memo dated 08-01-2003 rejecting the request of the petitioners. Therefore, the impugned order of the first respondent dated 08-01-2003 rejecting their case is contrary to BPMs.No.248, dated 11-08-1993. Therefore, the petitioners are seeking a direction to the respondents to consider their representations dated 31-05-2003 and 17-12-2003 as per B.P.Ms.No.248, dated 11-08-1993. Hence, these writ petitions.

A counter affidavit has been filed by the respondents denying the allegations made in the affidavit filed in support of the writ petition. It is stated that the qualification prescribed for the post of Bill Collector is SSLC. The 1st petitioner is a graduate by the time of appointment while the 2nd petitioner has acquired graduation qualification after joining as Bill Collector in the year 1977. The duration required for promotion on appointment by transfer from Bill Collector to L.D.C. is five years. It is further stated that those who have completed five years of service as Bill Collectors can be appointed as LDCs by transfer. According to the regulations, the petitioners have been appointed as LDCs from the Bill Collector cadre on 26-03-1980 and 10-04-1980 respectively. The petitioners are not eligible for appointment by transfer as LDCs though they have acquired graduation qualification. The orders of the Board in Memo dated 21-12-1990 were revised by order dated 05-06-1991 and subsequently the same were cancelled vide Memo dated 27-11-1991. Aggrieved by the same, the petitioners filed W.P.No.15563 of 1991 and the Hon'ble Court directed the petitioners to file an appeal by its order dated 27-07-1998. Consequently, the petitioner filed appeal before the Board and the Board vide its order dated 09-11-1999 dismissed the same confirming the orders dated 05-06-1991. The seniority of the petitioners have been revised by Memo dated 21-03-2001. Aggrieved by the same, one Sri Khader Basha, filed W.P.No.14285 of 2001 seeking to extend the same benefits as was done to the petitioners. The said writ petition was disposed of

by this court on 13-07-2001 with a direction to the respondents to consider his representation dated 18-02-2000. In pursuance of the said order, the revised memo dated 21-03-2001 was cancelled vide Memo dated 17-02-2004. Therefore, the case of the petitioners cannot be considered.

Learned counsel appearing for the petitioners contended that the petitioners were initially appointed as Bill Collectors. The academic qualification of graduation is necessary for appointment to the post of L.D.C either for direct recruitment or for appointment by transfer is not governed by B.P.Ms.No.447 dated 11-07-1974. The 1st petitioner was a graduate even on the date of appointment whereas the 2nd petitioner has acquired graduation on 30-04-1977. Therefore, as per the Board proceedings, the petitioners are eligible for appointment by transfer as LDCs from the date of acquisition of graduation and that is the reason why the 1st respondent issued proceedings dated 05-06-1991 appointing the petitioners with effect from the date of joining into service on 11-07-1974 and 30-04-1974 respectively. The said proceedings have been cancelled by the 1st respondent. Therefore, W.P.No.11567 of 1997 was filed and the same was disposed of on 27-09-1998 directing the petitioners therein to avail the alternative remedy. When the respondent-Board has not passed any orders in the appeal, another writ petition has been filed. Thereafter, the appeal was disposed of confirming the orders of the 1st respondent dated 05-06-1991. Thereafter, the 1st respondent without any authority passed the impugned order setting aside the proceedings dated 05-06-1991. He contended that the 1st respondent cannot review the order of the appellate authority. No notice was given to the petitioner but only relying upon the internal instructions issued by the second respondent, the impugned order was passed and, therefore, it is liable to be set aside.

On the other hand, learned Standing Counsel appearing for the respondents contended that the respondent-Board proceedings will prospectively apply to the

petitioners and that minimum service of five years in the lower cadre is essential for giving promotion by transfer as LDCs and, therefore, the petitioners were given promotion in the year 1980. They cannot ask for a notional seniority from the date of notional appointment in the lower category from 1974 onwards and no notice is required in view of the fact that the 2nd respondent had given instructions to the 1st respondent and, therefore, the order under challenge does not suffer from any legal infirmities so as to call for interference by this court.

The order in W.P.No.3808 of 2004 will decide the fate of the petitioners in W.P.No.1854 of 2004.

It is not in dispute before this Court that the 1st petitioner, who is having graduation qualification, was appointed as a Bill Collector on 11-03-1974, whereas the 2nd petitioner was appointed as a Bill Collector on 14-08-1974, though he was not having graduation qualification, but subsequently the 2nd petitioner acquired the graduation qualification, while in service, on 30-04-1977. It is not in dispute before this court that the post of Bill Collector is the feeder category to the post of lower division clerk. As per B.P.Ms.No.447 dated 11-07-1974 graduation qualification is necessary for the post of lower division clerk whether by direct recruitment or by transfer from feeder category. As per B.P.Ms.No.843, dated 11-08-1978, the persons, who are in service prior to 11-07-1974, are exempted from possessing graduation qualification.

The factual matrix insofar as filing of earlier writ petitions and directions given by this court are not in dispute. The question as to whether the date of initial entry of the petitioners as Bill Collectors has to be taken into consideration for the purpose of fixing the notional seniority. It is not in dispute that the petitioners are appointed by transfer as LDCs on 26-03-1980 and 10-04-1980 respectively. The order of the 1st

respondent dated 05-06-1991 has become final, in view of the fact that the Board held that the proceedings dated 05-06-1991 shall be taken as valid.

As rightly contended by the learned counsel for the petitioner that the 1st respondent cannot review the order passed by the appellate authority, but, at the same time, it is required to notice that prior to 1980, the petitioners were not appointed by transfer as LDCs, though the Board proceedings indicate that the persons, who possessed graduation or five years of service in the lower category, are only eligible for promotion to the higher post. Taking advantage of the said Board proceedings, the petitioners indulged in speculation by giving a representation in the year 1990 stating that their services have to be notionally regularized in the category of LDC with effect from 1974. Basing on the eligibility criteria, the petitioners cannot claim even notional seniority. Even the notional seniority as fixed by the first respondent is confirmed by the Board with effect from 11-03-1974 and 14-08-1974, has become final, but they are illegal and perverse orders. No challenge has been made insofar as those proceedings are concerned, but the petitioners cannot claim any right or any benefit from those illegal orders. The entire case of the petitioners is based upon those two orders, which cannot be given effect to. There cannot be any dispute that any illegal orders cannot be perpetuated or cannot be given effect to. All the Board proceedings would only indicate the eligibility criteria. Simply because a person, who is having a graduation qualification for the purpose of promotion as LDC, it does not mean that he has to be appointed as LDC. Depending upon the vacancies, depending upon the confirmation in the lower cadre and depending upon the seniority, their promotion has to be given. So following the guidelines, the petitioners were given promotion in the year 1980. Now the petitioners are claiming for fixation of notional seniority in the cadre of LDC from the year 1974, on which date, they were not appointed by transfer as LDCs.

The contention of the petitioners is absurd and perverse to say that their notional seniority in the promotion post has to be determined and decided with reference to the appointment in the feeder category.

As no right of the petitioner is being affected, the question of giving any notice before passing the impugned order does not arise. Hence, W.P.No.3808 of 2004, is devoid of merit and the same is dismissed.

Since the impugned order in W.P.No.1858 of 2004 is a consequential order to the impugned order in W.P.No.3808 of 2004, W.P.No.1858 of 2004 is also dismissed. No order as to costs.

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K.C.BHANU, J

Date: 16-08-2005

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